

<b>ADAMHS BOARD FOR MONTGOMERY COUNTY</b>		<b>BP # 503</b>	
<b>TITLE: Mitigating the Effects of Unauthorized Use/Disclosure of Protected Health Information</b>		<b>SUBJECT: HIPAA</b>	
Page: 1 of 2		<b>EFFECTIVE DATE</b> 4/14/03	<b>SUPERSEDES DATE</b>

**PURPOSE:** The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires the Alcohol, Drug Addiction and Mental Health Services Board for Montgomery County to mitigate, to the extent practicable, any harmful effect that is known to the Alcohol, Drug Addiction and Mental Health Services Board for Montgomery County as a result of any unauthorized use or disclosure protected health information (PHI) by the Alcohol, Drug Addiction and Mental Health Services Board for Montgomery County or its business associates. This policy has been developed to assist the Alcohol, Drug Addiction and Mental Health Services Board for Montgomery County's officers, staff and agents in complying with the law and to minimize harm to the client/member.

#### **POLICY:**

1. The Alcohol, Drug Addiction and Mental Health Services Board for Montgomery County shall take reasonable action to minimize any harmful effects resulting from the unauthorized use or disclosure of protected health information by the Alcohol, Drug Addiction and Mental Health Services Board for Montgomery County or its business associates and shall take steps to correct known instances of harm.
2. Business associates shall be contractually obligated to notify the Board of any unauthorized use or disclosure of PHI and any harmful effects known to them. Business associates shall also bear the financial burden of any misuse of PHI by their employees or agents.
3. Determination of the need for mitigation when PHI has been used or disclosed without authorization shall be determined on a case-by-case basis by the Board's privacy officer with or without consultation with other senior leaders or legal counsel.

#### **DEFINITIONS**

- 1.1 Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA is comprehensive law enacted by the United States government. The law has several subparts providing such benefits as guaranteed portability and renewal of insurance benefits between employers, tax provisions for medical savings accounts and administrative simplification to improve the efficiency and effectiveness of the health care system. During the latter part of the 1990's, the Secretary of the Department of Health and Human Services

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drafted regulations for standardizing the electronic interchange of administrative and financial data and protecting the security and privacy of personal health information. HIPAA requires health care providers, health plans and health care clearinghouses to transition to the use of standard code sets and “electronic data interchange (EDI) and to maintain reasonable and appropriate administrative, technical, and physical safeguards to insure the integrity and confidentiality of healthcare information; to protect against reasonably foreseeable threats and hazards to the security or integrity of the information; and, to protect against unauthorized uses or disclosure of the information. Compliance with the first of the HIPAA rules is scheduled for early 2003. HIPAA also provides criminal penalties for failure to comply with the regulations.

- 1.2 Protected Health Information (PHI). The final rule defines PHI as individually identifiable health information that is transmitted by electronic media; maintained in any electronic medium such as magnetic tape, disc, optical file; or transmitted or maintained in any other form or medium (i.e. paper, voice, Internet, fax etc.).
- 1.3 Business Associate. A business associate is a person or entity that provides certain functions, activities, or services for, or to a covered entity (healthcare provider, health plan, healthcare clearinghouse), involving the use and/or disclosure of PHI. A covered entity may be a business associate of another covered entity.
- 1.4 Mitigation. The act of causing an event or circumstance to become less harsh or hostile, or making an event or circumstance less severe or painful.
- 1.5 Harmful Effects. The definition of harmful effects is debatable. As it relates to the breach of privacy of an individual’s protected health information, harmful effects may be determined by the impact of an unauthorized use or disclosure of PHI on such things as reputation, the safety of the person and significant others, health, employability, financial and social status, emotional distress, etc.